

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|-------------------------------------|---|----------|
| THE JOINT APPLICATION OF CONTEL |) | |
| CELLULAR OF LOUISVILLE, INC. AND |) | |
| RURAL CELLULAR COMMUNICATIONS, INC. |) | |
| FOR APPROVAL OF THE TRANSFER AND |) | CASE NO. |
| ACQUISITION OF CELLULAR TELEPHONE |) | 91-458 |
| ASSETS IN KENTUCKY RURAL SERVICE |) | |
| AREA NO. 6(B1) AND THE FINANCING |) | |
| THEREOF |) | |

O R D E R

This matter arising upon petition of Contel Cellular of Louisville, Inc. ("Contel Cellular") and Rural Cellular Communications, Inc. ("Rural Cellular") filed December 11, 1991 pursuant to 807 KAR 5:001, Section 7, for confidential protection of the asset purchase agreement between Contel Cellular and Rural Cellular, Rural Cellular's pro forma financial statements, and Kenneth L. Ramsey's personal financial statement on the grounds that disclosure of the information is likely to cause Rural Cellular competitive injury and disclosure of the financial statement would constitute an invasion of personal privacy, and it appearing to this Commission as follows:

Contel Cellular and Rural Cellular seek approval of the transfer of Contel Cellular's assets used in providing domestic public cellular radio communications service in the B1 portion of Kentucky Rural Service Area No. 6 ("RSA No. 6(B1)") to Rural Cellular. In support of the application, the parties have filed a

copy of the asset purchase agreement identified as Exhibit B to the application; a pro forma income statement and financial statement for RSA No. 6 (B1) identified as Exhibit D to the application; and a personal financial statement for Kenneth L. Ramsey, President and sole shareholder of Rural Cellular identified as Exhibit E to the application. The parties contend that the information sought to be protected is exempt from public disclosure.

KRS 61.870 requires all information filed with any public agency, including the Commission, be available for public inspection unless specifically exempted by statute. Exemptions from disclosure are contained in KRS 61.878 which lists 10 separate classifications of information. Information not subject to disclosure includes commercial information exempted under Subsection 1(b) of that section, and information of a personal nature exempted under Subsection 1(a) of that Section.

KRS 61.878(1)(b) protects information as confidential when it is established that disclosure is likely to cause substantial competitive injury to the party from whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The cellular telephone market is a competitive industry and Rural Cellular will face competition in the rural service area for which it seeks to acquire the operating rights from Contel

Cellular. Potential competitors could use the information on the purchase price for the assets and the terms for payment of that purchase price contained in the asset purchase agreement and information on projected revenues and expenses and estimated assets and liabilities contained in the pro forma financial statements to structure their rates or market their services in a manner that would preclude Rural Cellular from competing effectively for customers. Thus, disclosure of the information is likely to cause Rural Cellular competitive injury and the information is entitled to protection as confidential.

KRS 61.878(1)(a) exempts from disclosure "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." This provision is intended to protect from public disclosure any information contained in public records that relates the details of an individual's private life when the individual's privacy interest in the information outweighs the public's interest in the information. Board of Education of Fayette County v. Lexington Fayette Urban County Human Rights Commission, Ky. App. 625 S.W.2d 109, 111 (1981). An individual's financial statement falls within this category and in the absence of an overriding need in the public interest to disclose this information, the financial statement should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

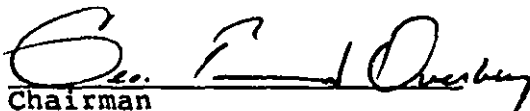
1. The asset purchase agreement between Contel Cellular and Rural Cellular, Rural Cellular's pro forma financial statements,

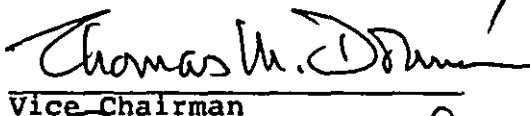
and Kenneth L. Ramsey's personal financial statement, which the parties have petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

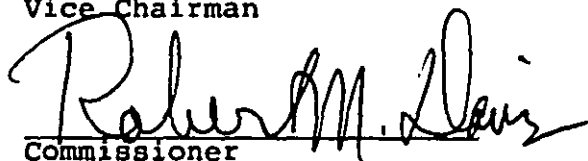
2. The parties shall, within 10 days of the date of this Order, file edited copies of the information with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 9th day of January, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director